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SUBJECT: INTERNATIONAL SEABED AUTHORITY - 2005 (ELEVENTH)
SESSION OF ASSEMBLY

REF: STATE 145929

Summary -

1. (U) The Eleventh Session of the International Seabed Authority (ISBA) took place in Kingston, Jamaica from 15-26 August, 2005. The majority of the meeting's time was spent on the first detailed review of proposed regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area. Even though only an observer, the U.S. actively made arguments for balance between incentives to develop the resources of the Area and environmental concerns. A revised set of regulations will undergo a second round of scrutiny during next year's meeting.

2. (U) An issue of potentially more immediate concern to the U.S. is whether individual members of the ISBA Finance Committee can serve more than two terms. Unfortunately, during the discussion of the issue, Australia made the suggestion that the meeting of States Party to the Law of the Sea (SPLOS) be asked to resolve the question. Some other states, notably Russia, agreed with the proposal. Ultimately, with the U.S. and others taking the opposite view, there was no consensus on how to move forward. How the issue will be resolved is not clear, but Finance Committee elections will need to take place during next year's ISBA session.

3. (U) Other issues that arose included resolution of Japan's suggestion to use ISBA program funds to support travel of developing country experts to ISBA meetings. The Japanese representative on the FC, apparently after considerable pressure from Tokyo, agreed to the proposition that the trust fund remain voluntary, and that program funds not be used for that purpose. However, during the course of the meeting, ISBA Secretary-General (SYG) Nandan made the separate suggestion that a different trust fund be established to support developing country scientist participation in international research activities. Funding for the proposed trust fund would come from fees associated with pioneer investor funds. The FC will take up this suggestion next year. Korea pushed on the margins to determine criteria for membership in the ISBA Council's B Chamber - the investor chamber - in order to guarantee its own inclusion. The U.S. was asked to continue a coordinating role on this issue. Germany's application to explore for manganese nodules was accepted. The UK agreed to continue coordinating meetings of the group of 10 (G-10) -- Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Russia, UK, U.S. Although not an issue during this meeting, an acceptable candidate to succeed SYG Nandan is an issue that the U.S. will want to address in the near future.
End Summary.

Proposed Regulations

4. (U) The majority of the Eleventh Session of the International Seabed Authority (ISBA) that took place in Kingston, Jamaica from 15-26 August 2005, was taken up by the first detailed review of proposed regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area. Note: Roughly speaking, under the UN Convention on the Law of the Sea (UNCLOS), the "Area" is defined as the area beyond national jurisdictions. End Note. Even though only an observer to the meeting, the U.S. actively made arguments for balance between incentives to develop the resources of the Area and environmental concerns. A revised set of regulations will undergo a second round of scrutiny during next year's meeting.

5. (SBU) Comment: During the discussions, some of the most consistent voices in favor of environmental protections - Brazil, Argentina, Australia - also happened to be land-based producers of metals. When we asked representatives of metal-consuming countries how much interest the proposed regulations were generating among their private sectors, each told us that there was virtually no interest. In fact, no delegation was aware of any deep seabed mining being planned for the foreseeable future. We believe this dynamic lends

itself to a situation where land-based producers will be inclined to favor measures that have the impact of raising the bar on future deep seabed-based production, while future consumers of metals presently have little incentive to protect as yet ill-defined deep seabed mining interests. End Comment.

Finance Committee Elections

16. (U) Finance Committee (FC) members serve five-year terms. The terms of two stalwart members, the UK's Michael Wood and France's Jean Pierre Levy, will conclude by next year's meeting. During the ISBA meeting, there was controversy with regard to whether the UN Convention on the Law of the Sea (UNCLOS) allows for any given individual to serve more than two terms. The disagreement stemmed from possible discrepancies between the official UNCLOS texts in the various UN languages. Apparently the Spanish and French texts are fairly definitive that members can only serve two terms. The English text allows for the possibility of interpretation.

17. (SBU) During the discussion of the issue, the political dynamics were such that, generally speaking, the Latin countries and some other developing countries favored the two-term limitation. We presume their position was based on the consideration that no one individual should be allowed to become too powerful within the committee where many states will not always have representation. By contrast, ISBA SYG Nandan, apparently fearing loss of some of the individuals he has counted on in the past to address the most delicate issues raised in the FC, pressed for the more flexible interpretation.

18. (U) The U.S. took the position that we needed to consult legal experts in Washington. Since this issue arose during the last hour of the last day, this effectively meant that the U.S. was asking that no decision be made. Unfortunately, during the ensuing discussion, Australia made the suggestion that the meeting of States Party to the Law of the Sea (SPLOS) be asked to resolve the question. Some other states, notably Russia, agreed with the proposal. Ultimately, with the U.S. and others taking the opposite view, there was no consensus on how to go forward. How the issue will be resolved is not clear, but FC elections will need to take place during next year's ISBA session.

The Voluntary Trust Fund

19. (U) In 2002, in response to growing developing country demands, ISBA established a voluntary trust fund (VTF) aimed at defraying the cost of travel of developing country experts to meetings of ISBA's Legal and Technical Commission (LTC) and Finance Committee (FC.) Donations to the fund have been steady, but relatively minor. Consequently, the member states of ISBA authorized money to be advanced to the VTF from interest accrued in an unrelated fund, the Pioneer Fund.

110. (SBU) The Government of Japan disassociated itself from the latter action and, as an alternative, advocated the establishment of a contingency fund with similar goals as the VTF, but with funds drawn from the ISB program budget. The U.S. and others - France, Germany, UK - opposed the concept of using program funds for this purpose. In part, we objected to the unhelpful precedent such a means of funding would create for the entire UN system. Throughout the course of discussions on this issue, it became clear that the Japanese position was the work of its somewhat renegade FC representative, and, as we were unofficially told by other Japanese representatives, did not accurately represent the position of the Japanese government.

111. (SBU) After considerable work on the margins of other meetings, particularly the 2004 Major Maritime Powers meeting and the 2004 UN Informal Consultative Process on Oceans and Law of the Sea meeting, the Japanese government apparently decided to assert control over its FC representative. Clearly under specific instructions from Tokyo, in the 2005 meetings of the FC, the Japanese representative did not raise his previous concerns about the VTF and did not insist on use of ISBA program funds. He also agreed to the FC recommendation that the VTF be replenished from interest accumulated from the Pioneer funds.

112. (SBU) Comment: The greater issue of determining how much money is actually available in the Pioneer Fund as interest, or even as principal, remains to be determined. We expect increasing requests for use of the funds (see below) as member states become more cognizant of their existence. End Comment.

Proposed Trust Fund to Help Developing Country Scientists

13. (U) In his report to the meeting, Secretary-General (SYG) Nandan proposed the establishment of a trust fund to help developing country scientists participate in international research projects. He suggested that money for the trust come from funds accrued from pioneer investor fees or overages from future administrative fees. Developing countries enthusiastically embraced the general concept. The Finance Committee (FC) handled the issue well, first by asserting FC authority over the subject, and then by seeking a detailed proposal from Nandan on the trust. The FC also engineered that Nandan agree to speak with pioneer investors - presumably in case there are any objections to the use of these funds for the proposed purpose.

14. (SBU) Comment: This proposed trust fund will be an issue during next year's meeting. What the SYG proposes, and how the FC handles its recommendation concerning the trust, will both be critical in defining the discussion of the trust by ISBA members. End Comment.

Criteria for Chamber B Eligibility

15. (U) On the margins of the ISBA meeting, the Korean delegation pushed hard for the Chamber A (roughly consumer countries) and Chamber B (roughly investor countries) to work towards defining the criteria for membership in Chamber B. As per explicit provisions of the UN Convention on the Law of the Sea (UNCLOS), only eight member states can be eligible for election to the Council from Chamber B. Eligibility is based on national investments in deep seabed mining. Chamber B eligibility was last determined in 1995, and did not include Korea. The U.S. was asked to coordinate the process of coming to an acceptable conclusion on eligibility criteria.

16. (U) On the margins of the ISBA meeting, the U.S. hosted a meeting of A-B members to discuss an acceptable process leading up to next year's meeting. The group identified a preliminary list of questions to be addressed in determining criteria. That preliminary list includes: What types of resources can be included? - nodules, sulfides, crusts, methane hydrates, others? What types of activity costs can be included? -- marine scientific research, how to distinguish basic marine scientific research from "prospecting", exploration, ship building, costs of baseline studies, costs of training programs, costs incurred by private companies? Which technologies, particularly developing technologies? What should be the periodicity/interval of review? Should activities within an EEZ be included? Who should determine criteria - i.e. role, if any, of ISBA Secretariat? Korea's ultimate position was that should this exercise not result in acceptable criteria, then it would ask the ISBA Secretariat to promulgate criteria.

17. (SBU) Comment: From the U.S. perspective, Korean interests, expressed points of views, and specific interpretations of UNCLOS are very similar to our own. In fact, they are closer than some of the countries currently included in the B group (Netherlands, for example.) Generally speaking, including Korea in the B Chamber seems desirable. However, it is unlikely that this exercise in systematically identifying and defining criteria for group B membership will ultimately be successful. Agreeing on general criteria will be difficult enough. Once having established those criteria, agreeing on exactly which monetary figures can be included, or should be excluded, will be virtually impossible to agree on. Ultimately, as happened in 1995, it seems highly likely that only a political solution of some kind will conclude this discussion. End Comment.

Succession of ISBA Secretary-General Nandan

18. (SBU) Satya Nandan (Fiji) has been the Secretary-General (SYG) of ISBA since 1996, and is the only

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SYG the organization has had. During his tenure, for the most part, he has balanced the interests of developing and developed countries. However, his re-election in 2004 was both contentious and close. He told us then that he intended to seek his government's support for his candidacy as an International Tribunal of the Law of the Sea (ITLOS) judge. Apparently, perhaps given the closeness of the SYG race, his government decided not to put his ITLOS candidacy forward. Nandan has noticeably aged in the job, allegedly spends as little time as possible in Kingston, and though he has not told us this directly, must have been disappointed not to be selected as an ITLOS candidate. We believe it is highly likely that Nandan will not serve his full term as SYG.

119. (SBU) Comment: The issue of Nandan's succession, whenever it arises, will be a critical one with respect to shaping the role of ISBA as the organization searches for a full-time purpose while seabed mining remains only a distant possibility. Nandan's deputy, Nii Allotey Odunton (Guinea) is one possible successor. However, though Odunton remains a viable candidate, he is generally seen as a technician who might not have the political savvy required to ensure that ISBA not be high-jacked by one of its factions. ISBA candidatures are normally handled through the five UN regional groups. A Western European and Others Group (WEOG) candidate is generally assumed not to be politically viable, though perhaps a smaller WEOG country - Portugal, Belgium, Malta - with a very popular candidate might be feasible. Given the Group of Latin American and Caribbean Countries (GRULAC) push to expand the concept of "the common heritage of mankind" to include resources other than those specifically identified in the UN Convention on the Law of the Sea (UNCLOS), it is unlikely that the U.S. would want to support a GRULAC based candidate. Grossly speaking, this is likely to leave the most viable candidates as coming from the Eastern European group, the Asian group, or the African group. End Comment.

Other Issues

120. (U) Dates of Next Year's Session - The Twelfth Session of ISBA is tentatively scheduled for August 7-18, 2006, in Kingston, Jamaica.

121. (SBU) German Application for Seabed Mining -- Germany applied for a designated area in which to explore the possibility of manganese nodule mining. The application was accepted with little substantive debate except for developing countries urging Germany to expand its training program associated with the deep seabed exploration. The German delegation promised to attempt to do so. Specific coordinates for the new German area are available at: www.isa.org.jm The German delegation confirmed for us what they had told us before: The German government does not intend to mine at the current time. Instead, the decision to seek the approval for exclusive exploratory rights to this area was taken in light of a perceived long-term global metal demand increases, in combination with an opportunity to capitalize on substantial previous research made by a German firm no longer interested in the data.

122. (U) Elections to the Legal and Technical Commission (LTC) and the Finance Committee (FC) - Since the 2004 ISBA session, four members of the FC resigned. They were replaced through uncontested elections of a countryman. New FC members are: Oleg A. Safronov (Russia), Alexander Stedtfeld (Germany), Antonin Paoizek (Czech Republic), Kyaw Moe Tun (Burma). Similarly, on the LTC, three members resigned over the course of the year. One member died. All four vacancies were filled by uncontested elections of countryman. New LTC members are: Syamal Kanti Das (India), Mahmoud Samir Samy (Egypt), Michael Wiedicke-Hombach (Germany), and Adam M. Tugio (Indonesia).

123. (U) Elections of Assembly and Council Officers - It was the Western European and Others Group's (WEOG) turn to provide the Assembly's President. An internal debate was resolved on the margins of the UN Informal Consultative Process on Oceans and Law of the Sea in June in New York in favor of a compromise candidate: Norway's Olav Myklebust. He was subsequently elected at ISBA by consensus. Assembly Vice Presidents, also elected by consensus, were selected from Poland (Eastern European group), South Africa (African group), Brazil (Latin and Caribbean group) and Bangladesh (Asian group.) In the Council, the Asian Group nominated Korean Ambassador Hee Kwon Park to be Assembly Chairperson. He was elected by consensus. Council Vice Chairs, also elected by consensus, were selected from: Canada (WEOG), Russia (Eastern European), and Jamaica (Latin and Caribbean.) The African group did not nominate a Vice Chair.

124. (U) IUCN Request for Observer Status - IUCN's request for observer status was approved by the Assembly without debate.

125. (U) UK Continues to Lead G-10 - The Group of 10 (G-10) is a traditional, self-selected, like-minded group of countries that are particularly influential with respect to seabed mining and their roles within ISBA. The group consists of: Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Russia, UK, and the U.S. The UK, which has led the G-10 for the past two years, agreed to continue doing so for at least one more year.

126. (U) Death of Kenneth Rattray Observed - ISBA Secretary-General Nandan made a short intervention on the

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death of Jamaica's Dr. Kenneth Rattray, a long-time Law of the Sea expert. Many delegates who knew Rattray also made statements. The Jamaican delegation promised to pass on the sentiments to the Jamaican Foreign Ministry and to Dr. Rattray's family.

127. (U) U.S. Delegation - The U.S. delegation, only observers since the U.S. is not a member of UNCLOS, consisted of Constance C. Arvis, State, OES, Oceans Affairs, head of delegation, and Patricia Kraniotis, NOAA, General Counsel's Office.

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